


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

JAN 05 2011

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

JOHNATHAN LEE X SMITH¹,
Plaintiff,

v.

LAWRENCE WANG, et al.,
Defendants.

Civil Action No. 7:11-cv-00002

MEMORANDUM OPINION

By: Samuel G. Wilson
United States District Judge

Johnathan Lee X Smith, a Virginia inmate proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. However, Smith has had three previous civil actions dismissed as frivolous.² Therefore, Smith may not proceed with this action unless he either pays the \$350.00 filing fee or shows that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

As Smith has neither prepaid the filing fee nor demonstrated that he is “under imminent danger of serious physical injury,”³ the court dismisses his complaint without prejudice.⁴

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to plaintiff.

ENTER: This 4th day of January, 2011.


United States District Judge

¹ Plaintiff submits his case under the name “Johnathan Lee X”; however, according to online VDOC records, the name associated with the inmate number that plaintiff provides the court is Jonathan Lee Smith. Smith has filed many cases in this court and in the Eastern District of Virginia, and in many of those cases, the court recognized him as Johnathan Lee X Smith; therefore, the court will refer to plaintiff by the same name in this action to remain consistent.

² See Smith v. Ailstock, et al., Civil Action No. 7:95cv00939 (W.D. Va. Aug. 28, 1995); Smith v. Commonwealth of Virginia, et al., Civil Action No. 7:97cv00723 (W.D. Va. Dec. 17, 1997); Smith v. Ailstock, et al., Civil Action No. 3:96cv00339 (E.D. Va. Apr. 23, 1996); Smith v. Mueller, et al., Case No. 96-7602 (4th Cir. Jan. 29, 1997) (recognizing plaintiff as a three-striker under the PLRA).

³ Although Smith baldly asserts that he is in imminent danger of serious physical injury, the court notes that he is no longer housed at Green Rock Correctional Center, where he was allegedly exposed to the harm and where all of the named defendants work. In fact, Smith was transferred to Greensville Correctional Center, located in the Eastern District of Virginia, over a year ago. Therefore, the court finds that Smith has not demonstrated that he is under imminent danger of serious physical injury as a result of the actions or inactions of any of the named defendants.

⁴ The court has previously notified plaintiff that he may not file civil actions in this court unless he either pays the filing fee or demonstrates that he is under imminent danger of serious physical injury. Therefore, the court will not give plaintiff additional time to pay the filing fee or amend his complaint.